

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 240 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

NANJIBHAI RAICHANDBHAI

Appearance:

Mr. S.T. Mehta, Addl. Public Prosecutor
for the appellant.

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 08/07/1999

ORAL JUDGEMENT

The respondents, who were chargesheeted of the offences punishable under Section 326, 324, 504 read with Sec. 114 of the Indian Penal Code, came to be acquitted by the then learned Judicial Magistrate (F.C.), Viramgam, on 24th December 1991 delivering a judgment in Criminal Case No. 1389/87. The State, feeling aggrieved by the order of acquittal, has preferred this appeal.

2. It is not necessary to state the facts in details. However, to appreciate the contentions raised on behalf of the prosecution, necessary facts may be

stated. In connection with the monetary or land transactions the account was to be settled and payment was to be made. Hence Kashiram Babu, Ashok Babu and others were called at Viramgam sending a chit by the present respondents. On 10th April 1987 at 10.30 and at 13.30 hours, both the parties met at Viramgam. During the talks relating to monetary transaction the respondent No.1 was annoyed. He was having a knife. He gave knife blows to Kashiram Babu and Ashok Babu and other respondents showering stick blows caused injuries to other persons who had gone with Kashiram Babu and Ashok Babu. The injured were then taken to the hospital for treatment at Viramgam and later on those who were seriously injured were removed to Ahmedabad for better treatment. A complaint in the Viramgam police station for the aforesaid offences came to be lodged. After the investigation was over, a chargesheet against the respondents was filed in the lower court. As the respondents pleaded not guilty to the charge framed against them, prosecution led necessary evidence. Appreciating the evidence on record, the learned Judicial Magistrate found that the prosecution failed to establish the charge beyond reasonable doubt. He, therefore, acquitted all the respondents. It is against that order of acquittal, the present appeal has been preferred.

3. Assailing the judgment of the lower court, Mr. Mehta, the learned Addl. Public Prosecutor, taking me to the entire evidence on record, contends that the learned Judge was not right in appreciating the evidence. Just to find fault with the evidence, he assigning reasons not appealing to reason, acquitted the respondents. The learned Magistrate has without any ratiocination just for justifying acquittal has found fault with prosecution evidence. This is therefore a fit case wherein acquittal is required to be upset and the respondents may be convicted of the offences with which they are charged.

4. I have gone through the evidence with meticulous care and finicky details, and nowhere I find any error either of law or of fact having been committed by the learned Judicial Magistrate. He has assigned logical reasons and has reached the conclusion which any prudent man would also prefer to draw. When I am in general agreement with the learned Magistrate, it is not necessary to restate his reasonings and the conclusions he has drawn.

5. However, I will, in short, deal with the evidence on record so as to point out how the learned Magistrate is right and has made no mistake in appreciating the

evidence and drawing the conclusions. Somabhbhai Babubhai had gone to the police station to lodge the FIR. In the FIR he came out with the case that respondent No.1 gave a knife blow and caused injury to Ashok Babu and by another blow he caused injury to Kashiram Babu but when he deposed before the court he made a statement running counter to the averments made in FIR. Before the court he came out with the say that not respondent No.1 but Fula Raichand the respondent No.3 gave the knife blow and caused the injury. He does not say any thing against the respondent No.1. Regarding the injury caused to Ashokbhai Babubhai who is the injured, he has come out with a different story than already put-forth in the FIR. According to him, the respondent No.2 gave a knife blow to Kashiram Babu, while in respect of injury to Ashok, he made misleading & evasive statement pointing finger at no one in particular. Vasudevabhai examined at Ex. 28 qua the injury caused to Kashiram points the finger at Nanjibhai Fulabhai who is not the accused and not named as accused in the chargesheet filed in the lower court. Kashiram points the finger at respondent No.3 while other witnesses have come forward with the say that the respondent No.3 was armed with stick and not a knife. As per the case initially alleged in FIR Mela Raichand and Fula Raichand (respondents No. 2 & 3) are alleged to have caused injury by the stick to Somabhai and Bholabhai but above referred witnesses have changed the versions and made an attempt to involve them in a graver offence stating that they caused injury by the knife to Kashiram Babu. It is also pertinent to note that those who caused the injuries by stick are not even referred to by the witnesses. The complainant has also making the improvement in his case stated before the court that from his pocket amounts were snatched away putting him to instant fear of death or injury and thereby he was robbed, which is not the case at all in the FIR. Regarding this robbery also, there is a cross-cutting say amongst the witnesses. The complainant has alleged against the respondents while other witnesses have alleged against the sister of Chhaganbhai named Vasuben. At the time of hearing the complainant and his witnesses have made an attempt to rope in Kalubhai Virchand, Mangabhai, Ashokbhai Punabhai and Bai Chhanu though there is no allegation worth the name against either of them in the FIR, and even during the course of the investigation also no one has made a statement against these persons. Kashiram Babu has not supported the complainant making a statement that Fula Raichand, respondent No.3 caused the injuries and not respondent No.1. He has also made it clear in the cross that except the respondents there were many others who assaulted him and caused injury, and on

this point there is no elucidation putting required questions. Regarding the involvement of others, the fact is kept furtive.

6. Regarding the injury caused to Ashok Babu, attempt is made to rope in respondent No.1. When Ashok was trapped in the cross-examination, he had to admit that he did not state so before the police. Vasuben is examined at Ex. 28. According to her, Nanji Fula caused knife blow to Kashirambhai, and conveniently made obscure statement qua Ashok. This witness has therefore made attempt to rope in Nanji Fula not at all referred to by any of the witnesses and especially the complainant while lodging the complaint or giving statement during the course of the investigation and also giving evidence before the Court. Thus, about the injury, the witnesses have come forward with cross-cutting says. One tries to rope in one accused while the another tries to rope in another without any consistency in the story they have initially alleged and stated before the police. Thus, there is material and considerable improvements in the case of the prosecution. When that is so, prudent dictates that such evidence cannot be relied upon without any cogent independent corroboration which is lacking in this case. The learned Magistrate was, therefore, perfectly right in not placing reliance on all the witnesses who have come forward with the cross-cutting statements on the point of injury and author of blows. It is pertinent to note that though prosecution has not come forward with the case of robbery, the witnesses have the audacity to state about the same at the time of hearing so as to rope in the respondents and see that any-how they are sent behind bar. When accordingly the material improvements are made, no reliance in the absence of any cogent corroboration qua evidence on record can be placed. If the evidence led being not reliable is kept out of consideration, there is no other evidence which would rope in beyond doubt any of the respondents in respect of the charge levelled against them. All have not unfold the truth, but suppressing the same they have shrewdly not disclosed the manner in which the incident happened. Their say is therefore fishy and cannot be relied upon safely. They have cast clouds of suspicion on the credibility of entire wrap & woof of the prosecution story. If the ld. Magistrate was therefore right in acquitting the respondents. He has made no mistake, as canvassed. For no good cause the ld. APP has tried to find fault with the approach of the ld. Magistrate.

7. For the aforesaid reasons, the judgment and order

of the learned Judicial Magistrate are quite just & proper, and deserve to be maintained. The appeal, being devoid of merits, is liable to be dismissed and is dismissed accordingly, maintaining the order of acquittal.

(rmr).